



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB526]

Magnuson-Stevens Fishery Conservation and Management Act; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: NMFS has determined that three exempted fishing permit (EFP) applications warrant further consideration and is requesting public comment on those applications and on the Pacific Fishery Management Council's (Council) recommendations following its September 2021 meeting. The EFP applicants request an exemption from a prohibition on the use of unauthorized gear to harvest highly migratory species (HMS) under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The purpose of this exemption is to test the effects and efficacy of using new or alternative gear types to harvest swordfish and other HMS off of the U.S. West Coast.

DATES: Comments must be submitted in writing by *[Insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2021-0106, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter [NOAA-NMFS-2021-0106] in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Chris Fanning, NMFS West Coast Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier “NOAA-NMFS-2021-0106” in the comments.
- *Email:* wcr.hms@noaa.gov.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Chris Fanning, NMFS, West Coast Region, 562-980-4198.

SUPPLEMENTARY INFORMATION: Under the HMS FMP, Deep-Set Buoy Gear (DSBG) and midwater snap gear are not identified as legal commercial fishing gears. Use of these gears is currently only authorized under individual EFPs issued by NMFS upon the recommendation of the Council. At its June 2021 meeting, the Council reviewed 10 applications for HMS EFPs. The Council recommended that NMFS issue seven of the EFPs to authorize the use of DSBG and/or Deep-Set Linked Buoy Gear and that the Council consider the remaining three EFP applications (submitted by Mr. Bateman, Mr. Brown, and Mr. Perez)¹ at its September 2021 meeting.

Regarding Mr. Brown and Mr. Bateman’s EFP applications, the Council recommended in September 2021 that NMFS issue a single EFP covering the activities

¹ See <https://www.pcouncil.org/june-2021-briefing-book/#F> (F.3. Attachment 4, F.3. Attachment 4, and F.3. Attachment 9).

proposed in both applications and identifying the gear-type as “midwater snap gear.” The Council further recommended that the EFP incorporate in its Terms and Conditions the protective measures described in the California Department of Fish and Wildlife Report² (but with a maximum of 150 hooks per set rather than the 75 hooks stated in the report), as well as the measures described in the Enforcement Consultant Committee Report³.

Regarding Mr. Perez’s application, the Council did not take action on the portion of the application that requested authorization for fishing with DSBG and Night-Set Buoy Gear (NSBG) in selected areas in California state waters, as a Federal EFP is not applicable for activities in state waters. The Council did, however, recommend reissuance of Mr. Perez’s existing EFP for activities in Federal waters, which would authorize the use of NSBG inside the U.S. Exclusive Economic Zone (EEZ). Council recommendations can be found in the September 2021 Council meeting Decision Document⁴.

At this time, NMFS is requesting public comment on the EFP applications from Mr. Bateman and Mr. Brown and the recommendations of the Council during its September 2021 meeting related to those two applications. NMFS is also requesting public comment regarding the reissuance of Mr. Perez’s existing EFP. NMFS will take the Council's recommendations into consideration along with public comments on how and whether to issue the EFPs. If NMFS issues EFPs based on the September 2021 Council recommendations, a total of five vessels could be allowed to fish with midwater snap gear, and one vessel with NSBG, inside the U.S. EEZ. Vessels fishing under an EFP would be subject to existing regulations, including measures to mitigate interactions with protected species.

² See <https://www.pcouncil.org/documents/2021/09/d-3-a-revised-supplemental-cdfw-report-1.pdf/>.

³ See <https://www.pcouncil.org/documents/2021/09/d-3-a-supplemental-ec-report-1.pdf/>.

⁴ See <https://www.pcouncil.org/september-2021-decision-document/#HMS>.

NMFS will consider all public comments submitted in response to this **Federal Register** notice prior to issuance of any EFP included in this notice. Additionally, NMFS will analyze the effects of issuing the EFPs in accordance with the National Environmental Policy Act and NOAA's Administrative Order 216-6, as well as for compliance with other applicable laws, including Section 7(a)(2) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), which requires the agency to consider whether the proposed action is likely to jeopardize the continued existence and recovery of any endangered or threatened species or result in the destruction or adverse modification of critical habitat.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 6, 2022.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

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